

1900-038 Chancery Causes: Calvin Pardee vs. John S. Bailey &  
Lee Co.

Holmes, Parsons, Slump

CA-Contract Dispute  
T-Property



CIRCUIT COURT OF LEE COUNTY, VA.

Calvin Pardee, Complainant,

v.

BILL

John S. Bailey et al., Defendants.

\*\*\*\*\*

To the Honorable H. A. W. Skeen,

Judge of the Circuit Court of Lee County, Virginia.

Your orator, Calvin Pardee, states unto the Court as follows; to-wit:

First: That on March 18th, 1881, one John S. Bailey and Mary Bailey, his wife, executed and delivered to one John S. Holmes a certain written instrument intended by the said parties as a deed, by which the said grantors attempted to convey to the said Holmes a certain tract of land lying in the Crab Orchard, in Lee County, Virginia, containing fifty (50) acres, more or less; that the said written instrument is recorded in Lee County Deed Book 19, page 505, and a certified copy thereof is filed herewith as part hereof; that while said writing was intended as and for a deed, yet, notwithstanding, the said writing does not contain proper words of grant, and the same was not sealed as required by the laws of the State of Virginia; that the said John S. Holmes paid to the said grantors the full consideration for the said land as set forth in the said writing; and that the title to the said land, under the said John S. Holmes, has by divers mesne conveyances become vested in your orator;

Second: That, by deed dated March 1st, 1884, recorded in Lee County, Virginia, in Deed Book 23, page 226, a certified copy of which is filed herewith as part hereof, the said John S. Bailey and Mary Bailey, his wife, granted and conveyed to the said John S. Holmes another certain tract of land, lying in the Crab Orchard, in Lee County, Virginia,



containing twenty-five (25) acres, more or less; that the said deed was not properly acknowledged by the said Mary Bailey, and does not appear to have been acknowledged at all by the said John S. Bailey, although it is apparent from the certificate of acknowledgment that the said John S. Bailey did acknowledge the same, but the justices who took the acknowledgment simply failed to certify the fact; that the title to the said land has by divers mesne conveyances become vested in your orator; that the said John S. Bailey was fully paid for the said land by the said John S. Holmes;

Third: That on March 18th, 1881, the said John S. Bailey sold unto one William M. Bailey another certain tract or parcel of land lying in the Crab Orchard, in Lee County, Virginia, and on the same day executed and delivered to the said Wm. M. Bailey a writing which was intended by the said parties as and for a deed of conveyance of the said land; that said writing is recorded in Lee County in Deed Book 24, page 139, and a certified copy thereof is filed herewith as part hereof; that while the said writing was intended for a deed, yet, nevertheless, the scroll affixed thereto was not recognized as a seal in the body of the instrument, and under the laws of this State the said writing operates only as a contract, and not as a deed of conveyance; that the said William M. Bailey fully paid to the said John S. Bailey the purchase money for the said land, and the title to the said land, under the said Wm. M. Bailey, has become vested in your orator;

Your orator further says that the said Mary Bailey has departed this life, and likewise the said John S. Bailey, intestate, leaving the following children as his heirs at law, to-wit: 1st, Marion Bailey, who died intestate, leaving the following children as his heirs at law, viz,



(a) Jno. S. Bailey, (b) Wm. A. Bailey, (c) Charlie Bailey, (d) Tilman Bailey, and (e) Sally Bailey, all of which children are infants <sup>except the said John S. Bailey,</sup> ~~except the said John S. Bailey,~~ and all of the said children live in Lee County, Virginia; 2nd, Wm. M. Bailey, who lives in Lee County, Virginia; 3rd, Tilman Bailey, who lives in Harlan County, Kentucky; 4th, Bruner Bailey, who lives in Harlan County, Kentucky; 5th, Benjamin Bailey, who lives in Lee County, Virginia; 6th, Bascom Bailey, who lives in Indian Territory; 7th, Tipton Bailey, who lives in Knott County, Kentucky; 8th, a daughter, Sarah, who married John S. Holmes, and lives in Lee County, Virginia; 9th, a daughter, Nancy J., who married B. F. Parsons, and lives in Lee County, Virginia; 10th, a daughter, Martha, who married Jehu Holmes, and lives in Lee County, Virginia;

Wherefore your orator, being without remedy save in a Court of Equity, prays that all of the said heirs of the said John S. Bailey be made parties defendant hereto, and required to answer herein; that a guardian ad litem be appointed for the said infant heirs defendants, and required to answer for them; that an order of publication be made against the said non-resident defendants; and that, upon a final hearing, a Commissioner be appointed, with directions to convey unto your orator all of the right, title and interest of each and all of the said defendants in and to the said three tracts or parcels of land hereinbefore mentioned; and for costs, and such other further and general relief as the nature of the case may require, and to equity may seem meet.

Bullitt & Kelly, and

B. H. Sewell

p.q.



CIRCUIT COURT OF LEE COUNTY, VIRGINIA.

Calvin Pardee, Complainant,

v.

AFFIDAVIT.

John S. Bailey et al., Defendants.

Affiant Campbell Slemp states on oath that affiant  
Tilman Bailey, Bruner Bailey, Bascom Bailey, and Tipton  
Bailey, who are defendants in a certain suit about to be  
instituted in the Circuit Court of Lee County, Virginia, by  
Calvin Pardee against them and others, are non-residents of  
the State of Virginia.

C. Slemp

State of Virginia )  
                          ) to-wit:  
County of Wise        )

I, James Shackle, a notary public  
in and for the State and County aforesaid, do hereby certifi-  
fy that Campbell Slemp, whose name is signed to the fore-  
going affidavit, this day personally appeared before me in  
my County aforesaid, and made oath that the statements con-  
tained in the above affidavit are true.

Given under my hand this 30th day of July,  
1900.

*Per 254*

James Shackle Not. Public



Calvin Pardee  
Affi for Order Prob  
John S Bailey et al

Filed August 4<sup>th</sup> 1900  
A. B. Munsey Clerk

CIRCUIT COURT OF THE COUNTY, VIRGINIA.

Calvin Pardee, defendant,

John S. Bailey et al., complainants.

VERDICT.

1900.

Given under my hand this 4th day of August.

The County Records, and made oath that the statements con-  
tained in the above affidavit are true.  
In testimony whereof, I have personally appeared before me in  
the Court of the County Records, who have signed for the Court  
in the County Records, and approved of the same.

Calvin Pardee  
John S. Bailey et al.

Calvin Pardee, defendant,  
John S. Bailey et al., complainants.  
The Circuit Court of the County, Virginia, do hereby certify that the above statements are true and correct, and that the same have been filed for the record in the County Records, and approved of the same.



Plaintiffs Costs

Clerk 6.62  
Tax 1.50  
Shff 4.50  
atty 15.00  
Printer 12.40  
L.A.L. 5.00  
445.02

Calvin Pardee,

vs { Orig-Bill

John S. Bailey et al

Mullitt & Kelly v R. H. Sawley

1900. 1<sup>st</sup> Sept rules Bill filed  
Spa executed on home  
defts & O. P. for non-residents  
& D. N.

" 2<sup>nd</sup> Sept rules O. P. Com-  
plete D. N. Confd & Cause  
Set for hearing



MEMORANDUM FOR CLERK

Circuit Court of Lee County, Virginia.

1st September Rules, 1900.

Calvin Pardee, Complainant,

v.

John S. Bailey, Wm. A. Bailey, Charlie Bailey, Tilman Bailey, Sally Bailey, Wm. M. Bailey, Tilman Bailey, Bruner Bailey, Benjamin Bailey, Bascom Bailey, Tipton Bailey, Sarah Holmes, John S. Holmes, Nancy J. Parsons, B. F. Parsons, Martha Holmes, and Jehu Holmes, Defendants.

Make order of publication against the non-resident defendants, namely, Tilman Bailey, Bruner Bailey, Bascom Bailey and Tipton Bailey, and publish the same in the South-West Virginian, and post the same at the front door of the Court-house.

Appoint Guardian ad litem for the infant defendants, viz., Wm. A. Bailey, Charlie Bailey, Tilman Bailey and Sally Bailey; ~~and for the said defendants~~

Issue summons against all of the home defendants returnable to 1st September Rules. The home defendants are as follows: <sup>John S. Bailey</sup> Wm. M. Bailey, Benjamin Bailey, John S. Holmes and Sarah Holmes, his wife, B. F. Parsons, and Nancy J. Parsons, his wife, Jehu Holmes and Martha Holmes, his wife.

In the order of publication, state the object of the suit as follows, to-wit: "The object of this suit is to have the Court appoint a commissioner to convey unto the plaintiff, Calvin Pardee, all the right, title and interest of each and all of the defendants, heirs of John S. Bailey, in and to three certain tracts or parcels of land, lying in the Crab Orchard, in Lee county, Virginia, namely:

All that certain tract or parcel of land lying in the Crab Orchard, in Lee County, Va., containing 50 acres,



more or less, conveyed by the said John S. Bailey, deceased, instrument to John S. Holmes, by ~~deed~~ dated March 18th, 1881, recorded in Lee County in Deed Book 19, page 505, ~~which said written instrument was intended by the parties as and for a deed of conveyance, but, while the said writing was intended as a deed, yet, notwithstanding, the said writing does not contain proper words of grant, and the same was not sealed as required by the laws of the State of Virginia;~~

Another certain tract or parcel of land lying in the Crab Orchard, in Lee County, Virginia, containing 25 acres, more or less, conveyed by the said John S. Bailey, and Mary Bailey, his wife, unto the said John S. Holmes, by deed dated March 1st, 1884, recorded in Lee County, in Deed Book 23, page 236, ~~the said deed not being properly acknowledged by the said Mary Bailey, and not appearing to have been acknowledged at all by the said John S. Bailey, altho' it is apparent from the certificate of ~~reced~~ acknowledgment that the said John S. Bailey did acknowledge the same, but the justices who took the acknowledgment simply failed to certify the fact;~~

And another certain tract or parcel of land lying in the Crab Orchard, in Lee County, Virginia, conveyed by the said John S. Bailey unto one William M. Bailey, by a certain written instrument, dated ?March 18th, 1881, recorded in Lee County Deed Book 24, page 139, which said writing was intended for a deed, yet, ~~nevertheless, the scroll affixed thereto was not recognized as a seal in the body of the instrument, and under the laws of this State the said writing operates only as a contract, and not as a deed of conveyance".~~



Circuit Court of Lee County,

Calvin Pardee

versus

John S. Bailey et al

The answer of Wm A. Bailey  
Charley Bailey, Truman Bailey  
and Sallie Bailey by D.C.  
Sewell their Guardian ad  
litem in the above styled  
cause.

Respondents by their Guardian ad  
litem say that they are infants  
and therefore they commend them-  
selves and their rights herein to  
the protection of the court and pray  
that no decree be entered herein  
to their prejudice; and Respondents  
pray to be hence dismissed with  
their costs.

D. C. Sewell  
Guardian ad litem.



Calvin Pender

Ans. of  
G. A. L.

John S. Bailey et al

Filed in open court  
and by leave thereof  
This Nov. 8. 1900.

A. B. Munsey  
Clerk.



CIRCUIT COURT OF LEE COUNTY, VIRGINIA.

Calvin Pardee, Complainant,

v.

DECREE.

John S. Bailey et al., Defendants.

\*\*\*\*\*

This cause came on this day to be heard upon the bill and exhibits filed therewith, and the answer of the infant defendants, Wm. A. Bailey, Charlie Bailey, Tilman Bailey and Sally Bailey, by their guardian ad litem, B. H. Sewell, and upon replication to the said answer, and was argued by counsel; and it appearing to the Court that John S. Bailey, Wm. M. Bailey, Benj. Bailey, John S. Holmes, Sarah Holmes, B. F. Parsons, Nancy J. ~~J.~~ Parsons, Jehu Holmes, and <sup>+</sup>Martha Holmes, have been duly summoned in this cause; and that an order of publication against the non resident defendants, Tilman Bailey, Bruner Bailey, Pascom Bailey and Tipton Bailey, has been duly made, published and posted as required by law in case of non-resident defendants, and that none of the said defendants has appeared, answered or pleaded herein, the bill is taken for confessed as to each and all of the said adult home defendants, and as to each and all of the said non-resident defendants; and it is further adjudged, ordered and decreed by the Court that B. H. Sewell, who is hereby appointed a Special Commissioner for the purpose, do execute and deliver unto Calvin Pardee, the complainant herein, a deed, conveying to him all the right, title and interest of each and all of the defendants to this cause in and to all those three (3) certain tracts or parcels of land lying and being in the Crab Orchard, in Lee County, Virginia, referred to in the bill of complaint;

And thereupon came the said B. H. Sewell, Special Commissioner, and filed his report, showing that he had ex-



ecuted the said deed as above directed, and filed the said deed with his said report for the inspection of the Court, and it is adjudged, ordered and decreed that the said report and the said deed be, and the same are, hereby approved and confirmed, and the said complainant is given leave to withdraw the said deed from the papers in this cause; and nothing further appearing to be done herein, this cause is stricken from the docket, *at the plaintiffs Costs.*



Calvin Pardee

vs. { Deane Finne

John S. Bailey et al

Enter this

Oct Nov 8<sup>th</sup> 1900

H. A. W. Spence

Entered on 6<sup>th</sup> Hy. O. B.

No. 6, P. 436.



CIRCUIT COURT OF LEE COUNTY, VIRGINIA.

Calvin Pardee, Complainant,

v. Report of B.H.Sewell, Special Commissioner.

John S. Bailey et al., Defendants.

The undersigned, B. H. Sewell, who was this day appointed a Special Commissioner in this cause, would respectfully report that he has executed a deed into the complainant, Calvin Pardee, as directed in the said decree, and now files the said deed for the inspection of the Court.

Respectfully submitted

*B. H. Sewell,*

Special Commissioner.



Calvin Pordce  
vs { Conn's Report  
of Deed.  
John S. Bailey et al,

Filed in Open  
Court, this  
Nov. 8<sup>th</sup> 1900  
A. B. Mursey Ck

Special Commissioner.

Respectfully submitted

for the inspection of the Court.

as directed in the said decree, and

has executed a good and true com-

missioner in this case, would re-

miss, E. H. Sewell, who was this day

John S. Bailey et al., Defendants.

v. Report of E. H. Sewell, Special Commissioner.

Calvin Pordce, Complainant.

CIRCUIT COURT OF THE COUNTY, VIRGINIA.



The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon John S. Bailey, Wm. A. Bailey, Charles  
Bailey, Lilman Bailey, Sally Bailey, Wm. M. Bailey, Lilman Bailey  
Bruner Bailey, Benjamin Bailey, Bascom Bailey, Lipton Bailey  
Sarah Holmes, John S. Holmes, Nancy J. Parsons, B. F. Parsons, Martha  
to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held  
for the said court, on the 1st Monday in September 1900, to answer a  
bill in chancery exhibited against them in our said court by Calvin  
Pardee

Sarah Holmes and John S. Holmes

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the  
court-house, the 6th day of August 1900<sup>89</sup>, and in the 12<sup>5th</sup> year of the  
Commonwealth.

A. B. Munsey Clerk



~~Serve~~  
 Serve Copies on  
 Wm. M. Bailey  
 Benjamin Bailey  
 John S. Holmes  
 Sarah Holmes  
 John S. Bailey  
 B. F. Parsons  
 Nancy J. Parsons  
 Jehu Holmes  
 Martha Holmes

Executed by delivering  
 an attested office copy of  
 the within in Chancery  
 to Wm. M. Bailey, Benjamin  
 Bailey, John S. Bailey,  
 Sarah Holmes, John S. Holmes,  
 B. F. Parsons, Nancy J.  
 Parsons, Jehu Holmes  
 & Martha Holmes this  
 the 28th day of August  
 1900. N. D. Robbins Dept  
 for W. J. Milham S. L. C.

Robbins  
 Form No. 800½

Calvin Pardee

vs.

SUBPOENA

IN CHANCERY

John S. Bailey, et al.

Bullitt & Kelly  
 & B. H. Sewell p. q.

To 15th September Rules.

Circuit Court.

~~Executed by delivering~~  
~~a copy of the within~~  
~~subpoena to each~~  
~~person required~~  
~~this Aug 28th 1900.~~  
~~N. D. Robbins Dept.~~  
~~for W. J. Milham~~  
~~S. L. C.~~



In the Clerk's Office of the Circuit-Court of the County of  
Lee on the 6<sup>th</sup> day of August 1900.

Calvin Pardee Plaintiff  
against- In Chancery

John S. Bailey, Wm A. Bailey, Charley Bailey, Silman  
Bailey, Sally Bailey, Wm M. Bailey, Silman Bailey, Bruner  
Bailey, Benjamin Bailey, Bascom Bailey, Tipton Bailey,  
Sarah Holmes, John S. Holmes, Nancy J. Parsons, B. F. Parsons, Martha Holmes & Jehu Holmes.  
Defendants.

The object of this suit is to have the court appoint a Commissioner to convey unto the plaintiff, Calvin Pardee all the right-title and interest of each and all of the defendants, heirs of John S. Bailey deceased in and to three certain tracts or parcels of land lying in the Crab Orchard, in Lee County Virginia, namely: All that certain tract or parcel of land lying in the Crab Orchard in Lee County, Va, containing 50 acres, more or less, conveyed by the said John S. Bailey deceased, <sup>and wife</sup> to John S. Holmes by instrument dated March 18<sup>th</sup> 1881 recorded in Lee County in Deed Book 19 Page 575. Another certain tract or parcel of land lying in <sup>the</sup> Crab Orchard in Lee County Virginia containing 25 acres, more or less, conveyed by the said John S. Bailey and <sup>Mary</sup> ~~Martha~~ Bailey his wife, unto the said John S. Holmes by deed dated March 1<sup>st</sup> 1884 recorded in Lee County in Deed Book 23 Page 226. And another certain tract or parcel of land lying in <sup>the</sup> Crab Orchard in Lee County Virginia conveyed by the said John S. Bailey unto one Wm M. Bailey by a certain written instrument dated March 18<sup>th</sup> 1881 recorded in Lee County Deed Book 24 Page 139 which said writing was intended for a deed."

And an affidavit having been made and filed that the defendants Silman Bailey, Bruner Bailey, Bascom Bailey and Tipton Bailey are not residents of the State of Virginia, it is ordered that they do appear here within fifteen days after due publication hereof, and do what may be necessary to protect their interest in this suit. And it is further ordered that a copy hereof be published once a week for four weeks in the South-West Virginian, and that a copy be posted at the front door of the court-house of this County on the first day of the next term of the County Court.

A copy—Teste:

Bullitt & Kelly +  
B. H. Sewell

P. q.

A. B. Munsey

Clerk.



Calvin Pardee

vs. {

ORDER OF  
PUBLICATION.

John S. Bailey et al

Virginia Lee County, to-wit:  
I A. B. Munsey Clerk of the  
Circuit Court for Lee County,  
do hereby certify that I posted  
a copy of the within at the  
front door of the Court house  
of Lee County on the 1st  
day of August term <sup>1900</sup> of the  
County Court of said County  
Given under my hand this  
the 20th day of Aug 1900.  
A. B. Munsey Clerk



**CERTIFICATE OF  
ORDER OF PUBLICATION.**

I, A. M. Goins, Editor of the **SOUTH-  
WEST VIRGINIAN**, a weekly newspa-  
per published at Jonesville, Lee County,  
Va., do hereby certify that the annex-  
ed notice was published in said paper  
once a week for four successive weeks,  
commencing on the 9<sup>th</sup> day of

August, 1900.

A. M. Goins, EDITOR.

FEE, \$12.40.

VIRGINIA--In the Clerk's Office of  
the Circuit Court of the County of  
Lee on the 6th day of August, 1900.

**CALVIN PARDEE**, Plaintiff,  
against

John S. Bailey, Wm. A. Bailey,  
Charley Bailey, Tilman Bailey,  
Sally Bailey, Wm. M. Bailey, Til-  
man Bailey, Bruner Bailey, Benja-  
min Bailey, Bascom Bailey, Tipton  
Bailey, Sarah Holmes, John S.  
Holmes, Nancy J. Parsons, B. F.  
Parsons, Martha Holmes and Jehu  
Holmes, Defendants.

**IN CHANCERY.**

"The object of this suit is to have the  
Court appoint a commissioner to convey  
unto the plaintiff, Calvin Pardee, all the  
right, title and interest of each and all of  
the defendants, heirs of John S. Bailey,  
deceased, in and to three certain tracts or  
parcels of land lying in the Crab Orchard,  
in Lee County, Virginia, namely: all that  
certain tract or parcel of land lying in the  
Crab Orchard, in Lee County, Virginia,  
containing 50 acres, more or less, conveyed  
by the said John S. Bailey, deceased, and  
wife to John S. Holmes by instrument dat-  
ed March 18th, 1881, recorded in Lee  
County in Deed Book 19 Page 505. Another  
certain tract or parcel of land lying in  
the Crab Orchard in Lee County, Virginia  
containing 25 acres, more or less, conveyed  
by the said John S. Bailey and Mary Bai-  
ley, his wife, unto the said John S. Holmes  
by deed dated March 1st, 1884, recorded  
in Lee County in Deed Book 23 Page 226.  
And another certain tract or parcel of land  
lying in the Crab Orchard in Lee County,  
Virginia, conveyed by the said John S.  
Bailey unto one Wm. M. Bailey by a cer-  
tain written instrument dated March 18th,  
1881, recorded in Lee County Deed Book  
24 Page 129 which said writing was inten-  
ded for a deed."

And an affidavit having been made and  
filed that the defendants, Tilman Bailey,  
Bruner Bailey, Bascom Bailey and Tipton  
Bailey are not residents of the

State of Virginia, it is ordered that they  
do appear here within fifteen days after  
due publication hereof, and do what may  
be necessary to protect their interest in  
this suit. And it is further ordered that a  
copy hereof, be published once a week for  
four weeks in the Southwest Virginian,  
and that a copy be posted at the front door  
of the court house of this County on the  
first day of the next term of the County  
Court.

A copy--Teste:

A. B. MUNSEY, Clerk  
Bailey & Kelly and B. H. Sewell, p. q.

62. = \$12.40



ORDER OF PUBLICATION. .

Calvin Pardee

VS.

IN CHANCERY.

John S. Bailey et al.

FEE

\$12  $\frac{40}{100}$